

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 619**

**Introduced by Assembly Member Leslie**

February 17, 2005

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An act to amend Sections ~~1365.1 and 1367.1~~ of *1351, 1363.05, 1365.1, 1366.3, 1367.1, and 1368 of*, and to add Section 1367.2 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 619, as amended, Leslie. Common interest developments: assessments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. The association is permitted to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

The act gives an owner the right to request a meeting with the board of directors of the association to discuss a payment plan for the delinquent assessments, and requires the association to meet with the owner and provide the owner with the standards for payment plans, if any exist. The act also requires the association to distribute an annual notice to each member of the association, as specified, generally

outlining rights and responsibilities regarding assessments, foreclosure and nonjudicial foreclosure, payments, and meetings to discuss payment plans.

~~This bill would eliminate the right of an owner to request a meeting, and the obligation of the board of directors of the association to meet with the owner, to discuss a payment plan. Instead, the, for liens recorded on or after January 1, 2006, instead give an owner the right to require a meeting with the board of directors of the association to dispute the debt, and would require the board to meet with the owner, as specified. The bill would require the notice of delinquent assessment to include a checkbox and signature line a payment plan request form for the owner to request a payment plan, and would require the association to provide the owner with the standards for payment plans and to offer a payment plan, as specified. The bill would require any notice of default to be served according to specified methods, and would require the board to approve the commencement of any sale conducted by a trustee, as specified.~~

The bill would require the association to send copies of all notices described in these provisions to a secondary address, in care of the owner, upon the written request of the owner. The bill also would revise the contents of the annual notice provided by the association to its members to conform with these changes and to include *timeframes upon which various fees and costs will be incurred* and a schedule of reasonable fees and costs that the owner could be charged throughout any portion of the nonjudicial collection process.

*The bill would make additional conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    SECTION 1. Section 1351 of the Civil Code is amended to
- 2    read:
- 3    1351. As used in this title, the following terms have the
- 4    following meanings:
- 5    (a) "Association" means a nonprofit corporation or
- 6    unincorporated association created for the purpose of managing a
- 7    common interest development.
- 8    (b) "Common area" means the entire common interest
- 9    development except the separate interests therein. The estate in

1 the common area may be a fee, a life estate, an estate for years,  
2 or any combination of the foregoing. However, the common area  
3 for a planned development specified in paragraph (2) of  
4 subdivision (k) may consist of mutual or reciprocal easement  
5 rights appurtenant to the separate interests.

6 (c) “Common interest development” means any of the  
7 following:

8 (1) A community apartment project.

9 (2) A condominium project.

10 (3) A planned development.

11 (4) A stock cooperative.

12 (d) “Community apartment project” means a development in  
13 which an undivided interest in land is coupled with the right of  
14 exclusive occupancy of any apartment located thereon.

15 (e) “Condominium plan” means a plan consisting of (1) a  
16 description or survey map of a condominium project, which shall  
17 refer to or show monumentation on the ground, (2) a  
18 three-dimensional description of a condominium project, one or  
19 more dimensions of which may extend for an indefinite distance  
20 upwards or downwards, in sufficient detail to identify the  
21 common areas and each separate interest, and (3) a certificate  
22 consenting to the recordation of the condominium plan pursuant  
23 to this title signed and acknowledged by the following:

24 (A) The record owner of fee title to that property included in  
25 the condominium project.

26 (B) In the case of a condominium project which will terminate  
27 upon the termination of an estate for years, the certificate shall be  
28 signed and acknowledged by all lessors and lessees of the estate  
29 for years.

30 (C) In the case of a condominium project subject to a life  
31 estate, the certificate shall be signed and acknowledged by all life  
32 tenants and remainder interests.

33 (D) The certificate shall also be signed and acknowledged by  
34 either the trustee or the beneficiary of each recorded deed of  
35 trust, and the mortgagee of each recorded mortgage encumbering  
36 the property.

37 Owners of mineral rights, easements, rights-of-way, and other  
38 nonpossessory interests do not need to sign the condominium  
39 plan. Further, in the event a conversion to condominiums of a  
40 community apartment project or stock cooperative has been

1 approved by the required number of owners, trustees,  
2 beneficiaries, and mortgagees pursuant to Section 66452.10 of  
3 the Government Code, the certificate need only be signed by  
4 those owners, trustees, beneficiaries, and mortgagees approving  
5 the conversion.

6 A condominium plan may be amended or revoked by a  
7 subsequently acknowledged recorded instrument executed by all  
8 the persons whose signatures would be required pursuant to this  
9 subdivision.

10 (f) A “condominium project” means a development consisting  
11 of condominiums. A condominium consists of an undivided  
12 interest in common in a portion of real property coupled with a  
13 separate interest in space called a unit, the boundaries of which  
14 are described on a recorded final map, parcel map, or  
15 condominium plan in sufficient detail to locate all boundaries  
16 thereof. The area within these boundaries may be filled with air,  
17 earth, or water, or any combination thereof, and need not be  
18 physically attached to land except by easements for access and, if  
19 necessary, support. The description of the unit may refer to (1)  
20 boundaries described in the recorded final map, parcel map, or  
21 condominium plan, (2) physical boundaries, either in existence,  
22 or to be constructed, such as walls, floors, and ceilings of a  
23 structure or any portion thereof, (3) an entire structure containing  
24 one or more units, or (4) any combination thereof. The portion or  
25 portions of the real property held in undivided interest may be all  
26 of the real property, except for the separate interests, or may  
27 include a particular three-dimensional portion thereof, the  
28 boundaries of which are described on a recorded final map,  
29 parcel map, or condominium plan. The area within these  
30 boundaries may be filled with air, earth, or water, or any  
31 combination thereof, and need not be physically attached to land  
32 except by easements for access and, if necessary, support. An  
33 individual condominium within a condominium project may  
34 include, in addition, a separate interest in other portions of the  
35 real property.

36 (g) “Declarant” means the person or group of persons  
37 designated in the declaration as declarant, or if no declarant is  
38 designated, the person or group of persons who sign the original  
39 declaration or who succeed to special rights, preferences, or

1 privileges designated in the declaration as belonging to the  
2 signator of the original declaration.

3 (h) "Declaration" means the document, however denominated,  
4 which contains the information required by Section 1353.

5 (i) "Exclusive use common area" means a portion of the  
6 common areas designated by the declaration for the exclusive use  
7 of one or more, but fewer than all, of the owners of the separate  
8 interests and which is or will be appurtenant to the separate  
9 interest or interests.

10 (1) Unless the declaration otherwise provides, any shutters,  
11 awnings, window boxes, doorsteps, stoops, porches, balconies,  
12 patios, exterior doors, doorframes, and hardware incident thereto,  
13 screens and windows or other fixtures designed to serve a single  
14 separate interest, but located outside the boundaries of the  
15 separate interest, are exclusive use common areas allocated  
16 exclusively to that separate interest.

17 (2) Notwithstanding the provisions of the declaration, internal  
18 and external telephone wiring designed to serve a single separate  
19 interest, but located outside the boundaries of the separate  
20 interest, are exclusive use common areas allocated exclusively to  
21 that separate interest.

22 (j) "Governing documents" means the declaration and any  
23 other documents, such as bylaws, operating rules of the  
24 association, articles of incorporation, or articles of association,  
25 which govern the operation of the common interest development  
26 or association.

27 (k) "Planned development" means a development (other than  
28 a community apartment project, a condominium project, or a  
29 stock cooperative) having either or both of the following  
30 features:

31 (1) The common area is owned either by an association or in  
32 common by the owners of the separate interests who possess  
33 appurtenant rights to the beneficial use and enjoyment of the  
34 common area.

35 (2) A power exists in the association to enforce an obligation  
36 of an owner of a separate interest with respect to the beneficial  
37 use and enjoyment of the common area by means of an  
38 assessment which may become a lien upon the separate interests  
39 in accordance with Section 1367~~-or~~, 1367.1, or 1367.2.

40 (l) "Separate interest" has the following meanings:

(1) In a community apartment project, “separate interest” means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, “separate interest” means an individual unit, as specified in subdivision (f).

(3) In a planned development, “separate interest” means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) “Stock cooperative” means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners’ interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A “stock cooperative” includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

*SEC. 2. Section 1363.05 of the Civil Code is amended to read:*

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board

1 adjourns to executive session to consider litigation, matters  
2 relating to the formation of contracts with third parties, member  
3 discipline, personnel matters, or to meet with a member, upon the  
4 member's request, regarding the member's payment of  
5 assessments, as specified in Section 1367-~~or~~, 1367.1, *or* 1367.2.  
6 The board of directors of the association shall meet in executive  
7 session, if requested by a member who may be subject to a fine,  
8 penalty, or other form of discipline, and the member shall be  
9 entitled to attend the executive session.

10 (c) Any matter discussed in executive session shall be  
11 generally noted in the minutes of the immediately following  
12 meeting that is open to the entire membership.

13 (d) The minutes, minutes proposed for adoption that are  
14 marked to indicate draft status, or a summary of the minutes, of  
15 any meeting of the board of directors of an association, other  
16 than an executive session, shall be available to members within  
17 30 days of the meeting. The minutes, proposed minutes, or  
18 summary minutes shall be distributed to any member of the  
19 association upon request and upon reimbursement of the  
20 association's costs for making that distribution.

21 (e) Members of the association shall be notified in writing at  
22 the time that the pro forma budget required in Section 1365 is  
23 distributed, or at the time of any general mailing to the entire  
24 membership of the association, of their right to have copies of the  
25 minutes of meetings of the board of directors, and how and  
26 where those minutes may be obtained.

27 (f) As used in this section, "meeting" includes any  
28 congregation of a majority of the members of the board at the  
29 same time and place to hear, discuss, or deliberate upon any item  
30 of business scheduled to be heard by the board, except those  
31 matters that may be discussed in executive session.

32 (g) Unless the time and place of meeting is fixed by the  
33 bylaws, or unless the bylaws provide for a longer period of  
34 notice, members shall be given notice of the time and place of a  
35 meeting as defined in subdivision (f), except for an emergency  
36 meeting, at least four days prior to the meeting. Notice shall be  
37 given by posting the notice in a prominent place or places within  
38 the common area and by mail to any owner who had requested  
39 notification of board meetings by mail, at the address requested  
40 by the owner. Notice may also be given, by mail or delivery of

1 the notice to each unit in the development or by newsletter or  
2 similar means of communication.

3 (h) An emergency meeting of the board may be called by the  
4 president of the association, or by any two members of the  
5 governing body other than the president, if there are  
6 circumstances that could not have been reasonably foreseen  
7 which require immediate attention and possible action by the  
8 board, and which of necessity make it impracticable to provide  
9 notice as required by this section.

10 (i) The board of directors of the association shall permit any  
11 member of the association to speak at any meeting of the  
12 association or the board of directors, except for meetings of the  
13 board held in executive session. A reasonable time limit for all  
14 members of the association to speak to the board of directors or  
15 before a meeting of the association shall be established by the  
16 board of directors.

17 **SECTION 1.**

18 *SEC. 3.* Section 1365.1 of the Civil Code is amended to read:

19 1365.1. (a) The association shall distribute the written notice  
20 described in subdivision (b) to each member of the association  
21 during the 60-day period immediately preceding the beginning of  
22 the association's fiscal year. The notice shall be printed in at least  
23 12-point type *and shall be contained in a separate mailing.* An  
24 association distributing the notice to an owner of an interest that  
25 is described in Section 11212 of the Business and Professions  
26 Code that is not otherwise exempt from this section pursuant to  
27 subdivision (a) of Section 11211.7 of the Business and  
28 Professions Code, may delete from the notice described in  
29 subdivision (b) the portion regarding meetings and payment  
30 plans. The notice shall include *timeframes upon which various*  
31 *fees and costs shall be incurred, as well as* a schedule of  
32 reasonable fees and costs that the owner could be charged  
33 throughout any portion of the ~~nonjudicial collection~~ process.

34 (b) The notice required by this section shall read as follows:

35

36 "NOTICE ASSESSMENTS AND FORECLOSURE

37

38 This notice outlines some of the rights and responsibilities of  
39 owners of property in common interest developments and the  
40 associations that manage them. Please refer to the sections of the



Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, ~~2003~~ 2006. You may wish to consult a lawyer if you dispute an assessment.

**SECONDARY NOTICE ADDRESS**

An owner has the right to submit a written request to the association ~~identifying a secondary address, using a secondary address form, identifying up to two secondary addresses to which~~ all collection notices must be sent. *The request must be sent by mail using a manner that requires a signature to indicate the association has received it.* (Section ~~1367.1~~ 1367.2 of the Civil Code)

**ASSESSMENTS AND NONJUDICIAL FORECLOSURE**

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 *or* 1367.2 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, reasonable fees for preparing and monitoring payment plans, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 *or* 1367.2 of the Civil Code)

The association must comply with the requirements of Section 1367.1 *or* 1367.2 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 *or* 1367.2 of the Civil Code)

1 At least 30 days prior to recording a lien on an owner's  
2 separate interest, the association must provide the owner of  
3 record with certain documents by certified mail. Among these  
4 documents, the association must send a description of its  
5 collection and lien enforcement procedures and the method of  
6 calculating the amount. It must also provide an itemized  
7 statement of the charges owed by the owner. An owner has a  
8 right to review the association's records to verify the debt.  
9 (Section 1367.1 *or* 1367.2 of the Civil Code)

10 If a lien is recorded against an owner's property in error, the  
11 person who recorded the lien is required to record a lien release  
12 within 21 days, and to provide an owner certain documents in  
13 this regard. (Section 1367.1 *or* 1367.2 of the Civil Code)

14 The collection practices of the association may be governed by  
15 state and federal laws regarding fair debt collection. Penalties can  
16 be imposed for debt collection practices that violate these laws.

#### 17 18 PAYMENTS

19  
20 When an owner makes a payment, he or she may request a  
21 receipt, and the association is required to provide it. On the  
22 receipt, the association must indicate the date of payment and the  
23 person who received it. The association must inform owners of a  
24 mailing address for overnight payments. ( Section 1367.1 *or*  
25 1367.2 of the Civil Code)

26 An owner may dispute an assessment debt by giving the board  
27 of the association a written explanation, and the board must  
28 respond within 15 days if certain conditions are met. An owner  
29 may pay assessments that are in dispute in full under protest, and  
30 then request alternative dispute resolution. (Sections 1366.3 and  
31 1367.1 *or* 1367.2 of the Civil Code)-

32 An owner is not liable for charges, interest, and costs of  
33 collection, if it is established that the assessment was paid  
34 properly on time. (Section 1367.1 *or* 1367.2 of the Civil Code)

#### 35 36 PAYMENT PLANS

37  
38 An owner of a separate interest that is not a timeshare may  
39 request the association to consider a payment plan to satisfy a  
40 delinquent assessment. The association must inform owners of

the standards for payment plans. (Section ~~1367.1~~ 1367.2 of the Civil Code)

All associations must have a payment plan available to those owners who have received a notice of delinquent assessment, which may not be less than three months nor greater than six months in duration, unless the board, in its discretion, authorizes a longer payment plan a longer period of time for a payment plan is mutually agreed to by the homeowner and the association. Payment plans may incorporate assessments that accrue during the payment plan period, along with reasonable costs for the preparation and monitoring of the payment plan. A homeowner may request a payment plan by sending a written request or the payment plan request form sent to the homeowner in conjunction with the notice of delinquent assessment. The request must be sent by mail using a manner that requires a signature to indicate the association or its designated representative has received it. Upon request, the board must provide a payment plan. (Section ~~1367.1~~ 1367.2 of the Civil Code)

Payment plans must conform with the payment plan standards of the association. (Section ~~1367.1~~ 1367.2 of the Civil Code)”

SEC. 2. Section 1367.1 of the Civil Code is amended to read:

~~1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail at the owner’s address of record identified within the association’s records and any secondary address provided to the association of the following:~~

~~(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: “IMPORTANT NOTICE: IF YOUR~~

1 ~~SEPARATE INTEREST IS PLACED IN FORECLOSURE~~  
2 ~~BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT~~  
3 ~~MAY BE SOLD WITHOUT COURT ACTION.”~~

4 ~~(2) An itemized statement of the charges owed by the owner,~~  
5 ~~including items on the statement which indicate the amount of~~  
6 ~~any delinquent assessments, the fees and reasonable costs of~~  
7 ~~collection, reasonable attorney’s fees, any late charges, and~~  
8 ~~interest, if any.~~

9 ~~(3) A statement that the owner shall not be liable to pay the~~  
10 ~~charges, interest, and costs of collection, if it is determined the~~  
11 ~~assessment was paid on time to the association.~~

12 ~~(b) Any payments made by the owner of a separate interest~~  
13 ~~toward the debt set forth, as required in subdivision (a), shall first~~  
14 ~~be applied to the assessments owed, and, only after the~~  
15 ~~assessments owed are paid in full shall the payments be applied~~  
16 ~~to the fees and costs of collection, attorney’s fees, late charges, or~~  
17 ~~interest. When an owner makes a payment, the owner may~~  
18 ~~request a receipt and the association shall provide it. The receipt~~  
19 ~~shall indicate the date of payment and the person who received it.~~  
20 ~~The association shall provide a mailing address for overnight~~  
21 ~~payment of assessments.~~

22 ~~(c) (1) An owner may dispute the debt noticed pursuant to~~  
23 ~~subdivision (a) by submitting to the board a written explanation~~  
24 ~~of the reasons for his or her dispute. The board shall respond in~~  
25 ~~writing to the owner within 15 days of the date of the postmark~~  
26 ~~of the explanation, if the explanation is mailed within 15 days of~~  
27 ~~the postmark of the notice.~~

28 ~~(2) An owner, other than an owner of any interest that is~~  
29 ~~described in Section 11212 of the Business and Professions Code~~  
30 ~~that is not otherwise exempt from this section pursuant to~~  
31 ~~subdivision (a) of Section 11211.7 of the Business and~~  
32 ~~Professions Code, may submit a written request, or mark the~~  
33 ~~checkbox described in subdivision (d), for a payment plan for the~~  
34 ~~debt noticed pursuant to subdivision (a). The association shall~~  
35 ~~provide the owners the standards for payment plans, that shall, at~~  
36 ~~a minimum, provide for a payment plan of not less than three~~  
37 ~~months nor greater than six months in duration, unless the board,~~  
38 ~~in its discretion, authorizes a longer payment plan. Payment plans~~  
39 ~~may incorporate any assessments that accrue during the payment~~  
40 ~~plan period, along with reasonable costs for the preparation and~~

1 monitoring of the payment plan. Payment plans shall not impede  
2 an association's ability to place a lien on the property pursuant to  
3 this section. In the event of a default on any payment plan,  
4 collection action pursuant to this section and Sections 2924,  
5 2924b, and 2924c shall be resumed at the point prior to  
6 commencement of the payment plan. No additional late fees shall  
7 accrue during the payment plan period provided the owner is in  
8 compliance with the terms of the payment plan.

9 (d) The amount of the assessment, plus any costs of collection,  
10 late charges, and interest assessed in accordance with Section  
11 1366, shall be a lien on the owner's interest in the common  
12 interest development from and after the time the association  
13 causes to be recorded with the county recorder of the county in  
14 which the separate interest is located, a notice of delinquent  
15 assessment, which shall state the amount of the assessment and  
16 other sums imposed in accordance with Section 1366, a legal  
17 description of the owner's interest in the common interest  
18 development against which the assessment and other sums are  
19 levied, the name of the record owner of the owner's interest in  
20 the common interest development against which the lien is  
21 imposed. In order for the lien to be enforced by nonjudicial  
22 foreclosure as provided in subdivision (g), the notice of  
23 delinquent assessment shall state the name and address of the  
24 trustee authorized by the association to enforce the lien by sale.  
25 The notice of delinquent assessment shall be signed by the  
26 person designated in the declaration or by the association for that  
27 purpose, or if no one is designated, by the president of the  
28 association, and mailed in the manner set forth in Section 2924b,  
29 to all record owners of the owner's interest in the common  
30 interest development no later than 10 calendar days after  
31 recordation. The notice of delinquent assessment also shall  
32 include a checkbox and signature line for the owner to request a  
33 payment plan, that shall constitute the owner's request for a  
34 payment plan consistent with paragraph (2) of subdivision (c)  
35 upon the owner marking, signing, and forwarding back the notice  
36 of delinquent assessment to the association by first-class mail,  
37 return receipt requested. Within 21 days of the payment of the  
38 sums specified in the notice of delinquent assessment, the  
39 association shall record or cause to be recorded in the office of  
40 the county recorder in which the notice of delinquent assessment

1 is recorded a lien release or notice of rescission and provide the  
2 owner of the separate interest a copy of the lien release or notice  
3 that the delinquent assessment has been satisfied. A monetary  
4 charge imposed by the association as a means of reimbursing the  
5 association for costs incurred by the association in the repair of  
6 damage to common areas and facilities for which the member or  
7 the member's guests or tenants were responsible may become a  
8 lien against the member's separate interest enforceable by the  
9 sale of the interest under Sections 2924, 2924b, and 2924e,  
10 provided the authority to impose a lien is set forth in the  
11 governing documents. It is the intent of the Legislature not to  
12 contravene Section 2792.26 of Title 10 of the California Code of  
13 Regulations, as that section appeared on January 1, 1996, for  
14 associations of subdivisions that are being sold under authority of  
15 a subdivision public report, pursuant to Part 2 (commencing with  
16 Section 11000) of Division 4 of the Business and Professions  
17 Code.

18 (e) Except as indicated in subdivision (d), a monetary penalty  
19 imposed by the association as a disciplinary measure for failure  
20 of a member to comply with the governing instruments, except  
21 for the late payments, may not be characterized nor treated in the  
22 governing instruments as an assessment that may become a lien  
23 against the member's subdivision separate interest enforceable by  
24 the sale of the interest under Sections 2924, 2924b, and 2924e.

25 (f) A lien created pursuant to subdivision (d) shall be prior to  
26 all other liens recorded subsequent to the notice of assessment,  
27 except that the declaration may provide for the subordination  
28 thereof to any other liens and encumbrances.

29 (g) An association may not voluntarily assign or pledge the  
30 association's right to collect payments or assessments, or to  
31 enforce or foreclose a lien to a third party, except when the  
32 assignment or pledge is made to a financial institution or lender  
33 chartered or licensed under federal or state law, when acting  
34 within the scope of that charter or license, as security for a loan  
35 obtained by the association; however, the foregoing provision  
36 may not restrict the right or ability of an association to assign any  
37 unpaid obligations of a former member to a third party for  
38 purposes of collection. Subject to the limitations of this  
39 subdivision, after the expiration of 30 days following the  
40 recording of a lien created pursuant to subdivision (d), the lien

1 may be enforced in any manner permitted by law, including sale  
2 by the court, sale by the trustee designated in the notice of  
3 delinquent assessment, or sale by a trustee substituted pursuant to  
4 Section 2934a. In addition to the requirements of Sections 2924,  
5 2924b, and 2924c, any notice of default shall be served in the  
6 manner prescribed in Section 1162 of the Code of Civil  
7 Procedure. Any sale by the trustee shall be conducted in  
8 accordance with Sections 2924, 2924b, and 2924c applicable to  
9 the exercise of powers of sale in mortgages and deeds of trust.  
10 The fees of a trustee may not exceed the amounts prescribed in  
11 Sections 2924c and 2924d. Notwithstanding this subdivision, the  
12 board shall, by majority vote, approve the commencement of any  
13 sale conducted by a trustee pursuant to Sections 2924, 2924b,  
14 and 2924c, and transmit the board's written authorization to the  
15 trustee.

16 (h) Nothing in this section or in subdivision (a) of Section 726  
17 of the Code of Civil Procedure prohibits actions against the  
18 owner of a separate interest to recover sums for which a lien is  
19 created pursuant to this section or prohibits an association from  
20 taking a deed in lieu of foreclosure.

21 (i) If it is determined that a lien previously recorded against  
22 the separate interest was recorded in error, the party who  
23 recorded the lien shall, within 21 calendar days, record or cause  
24 to be recorded in the office of the county recorder in which the  
25 notice of delinquent assessment is recorded a lien release or  
26 notice of rescission and provide the owner of the separate interest  
27 with a declaration that the lien filing or recording was in error  
28 and a copy of the lien release or notice of rescission.

29 (j) (1) An association that fails to comply with the procedures  
30 set forth in this section shall, prior to recording a lien,  
31 recommence the required notice process.

32 (2) Any costs associated with recommencing the notice  
33 process shall be borne by the association and not by the owner of  
34 a separate interest.

35 (k) The association shall send copies of all notices described in  
36 this section to a secondary address, in care of the owner, upon the  
37 written request of the owner, in addition to sending copies of the  
38 notices to the owner's address of record.

39 (l) This section only applies to liens recorded on or after  
40 January 1, 2003.

1     *SEC. 4. Section 1366.3 of the Civil Code is amended to read:*

2     1366.3. (a) The exception for disputes related to association  
3 assessments in subdivision (b) of Section 1354 shall not apply if,  
4 in a dispute between the owner of a separate interest and the  
5 association regarding the assessments imposed by the  
6 association, the owner of the separate interest chooses to pay in  
7 full to the association all of the charges listed in paragraphs (1) to  
8 (4), inclusive, and states by written notice that the amount is paid  
9 under protest, and the written notice is mailed by certified mail  
10 not more than 30 days from the recording of a notice of  
11 delinquent assessment in accordance with Section 1367~~—or~~,  
12 1367.1, *or* 1367.2; and in those instances, the association shall  
13 inform the owner that the owner may resolve the dispute through  
14 alternative dispute resolution as set forth in Section 1354, civil  
15 action, and any other procedures to resolve the dispute that may  
16 be available through the association.

17     (1) The amount of the assessment in dispute.

18     (2) Late charges.

19     (3) Interest.

20     (4) All reasonable fees and costs associated with the  
21 preparation and filing of a notice of delinquent assessment,  
22 including all mailing costs, and including reasonable attorney's  
23 fees not to exceed four hundred twenty-five dollars (\$425).

24     (b) The right of any owner of a separate interest to utilize  
25 alternative dispute resolution under this section may not be  
26 exercised more than two times in any single calendar year, and  
27 not more than three times within any five calendar years. Nothing  
28 within this section shall preclude any owner of a separate interest  
29 and the association, upon mutual agreement, from entering into  
30 alternative dispute resolution for a number of times in excess of  
31 the limits set forth in this section. The owner of a separate  
32 interest may request and be awarded through alternative dispute  
33 resolution reasonable interest to be paid by the association on the  
34 total amount paid under paragraphs (1) to (4), inclusive, of  
35 subdivision (a), if it is determined through alternative dispute  
36 resolution that the assessment levied by the association was not  
37 correctly levied.

38     *SEC. 5. Section 1367.1 of the Civil Code is amended to read:*

39     1367.1. (a) A regular or special assessment and any late  
40 charges, reasonable fees and costs of collection, reasonable



attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner may dispute the debt noticed pursuant to subdivision (a) by submitting to the board a written explanation of the reasons for his or her dispute. The board shall respond in

1 writing to the owner within 15 days of the date of the postmark  
2 of the explanation, if the explanation is mailed within 15 days of  
3 the postmark of the notice.

4 (2) An owner, other than an owner of any interest that is  
5 described in Section 11212 of the Business and Professions Code  
6 that is not otherwise exempt from this section pursuant to  
7 subdivision (a) of Section 11211.7, may submit a written request  
8 to meet with the board to discuss a payment plan for the debt  
9 noticed pursuant to subdivision (a). The association shall provide  
10 the owners the standards for payment plans, if any exist. The  
11 board shall meet with the owner in executive session within 45  
12 days of the postmark of the request, if the request is mailed  
13 within 15 days of the date of the postmark of the notice, unless  
14 there is no regularly scheduled board meeting within that period,  
15 in which case the board may designate a committee of one or  
16 more members to meet with the owner.

17 (d) The amount of the assessment, plus any costs of collection,  
18 late charges, and interest assessed in accordance with Section  
19 1366, shall be a lien on the owner's interest in the common  
20 interest development from and after the time the association  
21 causes to be recorded with the county recorder of the county in  
22 which the separate interest is located, a notice of delinquent  
23 assessment, which shall state the amount of the assessment and  
24 other sums imposed in accordance with Section 1366, a legal  
25 description of the owner's interest in the common interest  
26 development against which the assessment and other sums are  
27 levied, the name of the record owner of the owner's interest in  
28 the common interest development against which the lien is  
29 imposed. In order for the lien to be enforced by nonjudicial  
30 foreclosure as provided in subdivision (g), the notice of  
31 delinquent assessment shall state the name and address of the  
32 trustee authorized by the association to enforce the lien by sale.  
33 The notice of delinquent assessment shall be signed by the  
34 person designated in the declaration or by the association for that  
35 purpose, or if no one is designated, by the president of the  
36 association, and mailed in the manner set forth in Section 2924b,  
37 to all record owners of the owner's interest in the common  
38 interest development no later than 10 calendar days after  
39 recordation. Within 21 days of the payment of the sums specified  
40 in the notice of delinquent assessment, the association shall

record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(f) A lien created pursuant to subdivision (d) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this

subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003, and prior to January 1, 2006.

*SEC. 6. Section 1367.2 is added to the Civil Code, to read:*

*1367.2. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the*

owner of record in writing by mailing by certified mail, return receipt requested, to the owner's address of record identified within the association's records and any secondary address provided to the association pursuant to subdivision (k) all of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement that indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board to dispute the debt as provided in paragraph (1) of subdivision (c) or pursuant to the process described in Section 1366.3.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner may dispute the debt noticed pursuant to subdivision (a) by submitting to the board a written explanation of the reasons for his or her dispute. The board shall respond in writing to the owner within 15 days of the date of the postmark of

1 the explanation, if the explanation is mailed within 15 days of the  
2 postmark of the notice. An owner, other than an owner of any  
3 interest that is described in Section 11003.5 of the Business and  
4 Professions Code, may submit a written request to meet with the  
5 board to explain the owner's reasons for the dispute. The board  
6 shall meet with the owner in executive session within 45 days of  
7 the postmark of the request, if the request is mailed within 15  
8 days of the date of the postmark of the notice, unless there is no  
9 regularly scheduled board meeting within that period, in which  
10 case the board may designate a committee of one or more  
11 members to meet with the owner. The association shall stay any  
12 further collection process from the point it receives the request  
13 for a meeting until after the meeting has concluded.

14 (2) An owner, other than an owner of any interest that is  
15 described in Section 11003.5 of the Business and Professions  
16 Code, may submit a written request for a payment plan or the  
17 payment plan request form described in subdivision (d) for the  
18 debt noticed pursuant to subdivision (a). The association shall  
19 provide the owners the standards for payment plans, which  
20 standards shall, at a minimum, provide for at least one payment  
21 plan per calendar year of not less than three months nor greater  
22 than six months in duration, unless a longer period of time for a  
23 payment plan is otherwise mutually agreed to by the homeowner  
24 and the association. Provided the association receives the  
25 owner's request for a payment plan within 90 days of the  
26 recordation of a notice of default, either by written request or by  
27 the form described in subdivision (d), the association shall offer  
28 a minimum three-month payment plan within 20 days of receipt  
29 of the owner's request for a payment plan that meets the  
30 requirements of this section. Payment plans may incorporate any  
31 assessments that accrue during the payment plan period, along  
32 with reasonable costs for the preparation and monitoring of the  
33 payment plan. Payment plans shall not impede an association's  
34 ability to place a lien on the property pursuant to this section. In  
35 the event of a default on any payment plan, collection action  
36 pursuant to this section and Sections 2924, 2924b, and 2924c  
37 shall be resumed at the point prior to commencement of the  
38 payment plan. Default occurs if a payment is not made in  
39 accordance with the payment plan 15 days after it becomes due.  
40 No additional late fees shall accrue during the payment plan

1 *period provided the owner is in compliance with the terms of the*  
2 *payment plan.*

3 *(d) (1) The amount of the assessment, plus any costs of*  
4 *collection, late charges, and interest assessed in accordance with*  
5 *Section 1366, shall be a lien on the owner's interest in the*  
6 *common interest development from and after the time the*  
7 *association causes to be recorded with the county recorder of the*  
8 *county in which the separate interest is located, a notice of*  
9 *delinquent assessment, which shall state the amount of the*  
10 *assessment and other sums imposed in accordance with Section*  
11 *1366, a legal description of the owner's interest in the common*  
12 *interest development against which the assessment and other*  
13 *sums are levied, the name of the record owner of the owner's*  
14 *interest in the common interest development against which the*  
15 *lien is imposed. A notice of delinquent assessment shall also be*  
16 *accompanied by the form, or a substantially equivalent form, as*  
17 *provided in paragraph (2) of subdivision (d) by which an owner*  
18 *may request a payment plan. Upon the owner completing,*  
19 *signing, and returning the form by mail to the association's*  
20 *principal office in any manner requiring a signature to indicate*  
21 *the recipient has received it, the owner is deemed to have*  
22 *requested a payment plan consistent with paragraph (2) of*  
23 *subdivision (c). In order for the lien to be enforced by*  
24 *nonjudicial foreclosure as provided in subdivision (g), the notice*  
25 *of delinquent assessment shall state the name and address of the*  
26 *trustee authorized by the association to enforce the lien by sale.*  
27 *The notice of delinquent assessment shall be signed by the person*  
28 *designated in the declaration or by the association for that*  
29 *purpose, or if no one is designated, by the president of the*  
30 *association, and mailed to the owner's address of record*  
31 *identified within the association's records, any secondary*  
32 *address provided to the association pursuant to subdivision (k),*  
33 *and in the manner set forth in Section 2924b, to all record*  
34 *owners of the owner's interest in the common interest*  
35 *development no later than 10 calendar days after recordation.*  
36 *Within 21 days of the payment of the sums specified in the notice*  
37 *of delinquent assessment, the association shall record or cause to*  
38 *be recorded in the office of the county recorder in which the*  
39 *notice of delinquent assessment is recorded a lien release or*  
40 *notice of rescission and provide the owner of the separate*

1 interest a copy of the lien release or notice that the delinquent  
2 assessment has been satisfied. A monetary charge imposed by the  
3 association as a means of reimbursing the association for costs  
4 incurred by the association in the repair of damage to common  
5 areas and facilities for which the member or the member's guests  
6 or tenants were responsible may become a lien against the  
7 member's separate interest enforceable by the sale of the interest  
8 under Sections 2924, 2924b, and 2924c, provided the authority  
9 to impose a lien is set forth in the governing documents. It is the  
10 intent of the Legislature not to contravene Section 2792.26 of  
11 Title 10 of the California Code of Regulations, as that section  
12 appeared on January 1, 1996, for associations of subdivisions  
13 that are being sold under authority of a subdivision public  
14 report, pursuant to Part 2 (commencing with Section 11000) of  
15 Division 4 of the Business and Professions Code.

16 (2) Pursuant to paragraph (1), the association shall include  
17 with the notice of delinquent assessment a form that shall be  
18 substantially equivalent to the following:

19 "I \_\_\_\_\_ do hereby request a payment plan to be  
20 arranged by the board for delinquent assessments owed by me to  
21 \_\_\_\_\_ Association. I understand that the payment plan,  
22 once executed, shall be followed in accordance with payment  
23 plan standards adopted by the board. If I default on the payment  
24 plan, I understand that collection may be resumed at the point  
25 prior to commencement of the payment plan. The payment plan  
26 may include any assessments that accrue during the payment  
27 plan period, as well as reasonable costs for the preparation and  
28 monitoring of the payment plan.

29 Signature: \_\_\_\_\_

30 (Homeowner)

31 Date: \_\_\_\_\_

32  
33 Please return the form by mail, in any manner requiring a  
34 signature to indicate the recipient has received it, within 90 days  
35 of the notice of default to the following address:

36 \_\_\_\_\_  
37 (association address) "

38 (e) Except as indicated in subdivision (d), a monetary penalty  
39 imposed by the association as a disciplinary measure for failure



1 of a member to comply with the governing instruments, except for  
2 the late payments, may not be characterized nor treated in the  
3 governing instruments as an assessment that may become a lien  
4 against the member's subdivision separate interest enforceable  
5 by the sale of the interest under Sections 2924, 2924b, and  
6 2924c.

7 (f) A lien created pursuant to subdivision (d) shall be prior to  
8 all other liens recorded subsequent to the notice of assessment,  
9 except that the declaration may provide for the subordination  
10 thereof to any other liens and encumbrances.

11 (g) An association may not voluntarily assign or pledge the  
12 association's right to collect payments or assessments, or to  
13 enforce or foreclose a lien to a third party, except when the  
14 assignment or pledge is made to a financial institution or lender  
15 chartered or licensed under federal or state law, when acting  
16 within the scope of that charter or license, as security for a loan  
17 obtained by the association; however, the foregoing provision  
18 may not restrict the right or ability of an association to assign  
19 any unpaid obligations of a former member to a third party for  
20 purposes of collection. Subject to the limitations of this  
21 subdivision, after the expiration of 30 days following the  
22 recording of a lien created pursuant to subdivision (d), the lien  
23 may be enforced in any manner permitted by law, including sale  
24 by the court, sale by the trustee designated in the notice of  
25 delinquent assessment, or sale by a trustee substituted pursuant  
26 to Section 2934a. In addition to the requirements of Sections  
27 2924, 2924b, and 2924c, any notice of default shall be served in  
28 the manner prescribed in Section 1162 of the Code of Civil  
29 Procedure. Any sale by the trustee shall be conducted in  
30 accordance with Sections 2924, 2924b, and 2924c applicable to  
31 the exercise of powers of sale in mortgages and deeds of trust.  
32 The fees of a trustee may not exceed the amounts prescribed in  
33 Sections 2924c and 2924d. Notwithstanding this subdivision, the  
34 board shall, by majority vote, approve the commencement of any  
35 sale conducted by a trustee pursuant to Sections 2924, 2924b,  
36 and 2924c, and transmit the board's written authorization to the  
37 trustee. The board shall approve the sale by separate action for  
38 the record owner in default and shall do so between the time  
39 notice of default is served and prior to the notice of sale.

1     (h) Nothing in this section or in subdivision (a) of Section 726  
2     of the Code of Civil Procedure prohibits actions against the  
3     owner of a separate interest to recover sums for which a lien is  
4     created pursuant to this section or prohibits an association from  
5     taking a deed in lieu of foreclosure.

6     (i) If it is determined that a lien previously recorded against  
7     the separate interest was recorded in error, the party who  
8     recorded the lien shall, within 21 calendar days, record or cause  
9     to be recorded in the office of the county recorder in which the  
10    notice of delinquent assessment is recorded a lien release or  
11    notice of rescission and provide the owner of the separate  
12    interest with a declaration that the lien filing or recording was in  
13    error and a copy of the lien release or notice of rescission.

14    (j) (1) Except as provided in paragraph (2), an association, or  
15    its agent, that fails to comply with the procedures set forth in this  
16    section or the association's own collection policy, shall  
17    recommence the required notice process starting from the  
18    earliest noncompliant step in the collection process.

19    (2) An association that fails to comply with the payment plan  
20    procedures identified in paragraph (2) of subdivision (c) shall be  
21    required to recommence any notice of default pursuant to  
22    Sections 2924, 2924b, and 2924c.

23    (3) Any costs associated with recommencing the notice  
24    process or notice of default shall be borne by the association and  
25    not by the owner of a separate interest.

26    (k) (1) Upon receipt of a written request by an owner using a  
27    secondary address form consistent with paragraph (2) and  
28    identifying up to two secondary addresses, the association shall  
29    send copies of any and all notices described in this section to all  
30    secondary addresses listed on the secondary address form. The  
31    secondary address form shall accompany each pro forma  
32    operating budget or summary thereof that is delivered pursuant  
33    to Section 1365. The secondary address form shall be sent by  
34    certified mail, return receipt requested. The owner may identify  
35    secondary addresses at any time, however, if secondary  
36    addresses are identified during the collection process, the  
37    association shall only be required to send notices from that point  
38    in time forward to the secondary addresses.

39    (2) The secondary address form shall allow the owner to list  
40    up to two secondary addresses. The form shall state that the

1 *person residing in or doing business at the secondary address*  
2 *shall have no legal duty pursuant to being named as a secondary*  
3 *contact. The form also shall indicate that the owner is*  
4 *responsible for advising the association of any change of*  
5 *secondary addresses and that the owner waives any privacy*  
6 *claims as they relate to notices sent to an outdated secondary*  
7 *address pursuant to this subdivision.*

8 *(l) This section only applies to liens recorded on or after*  
9 *January 1, 2006.*

10 *SEC. 7. Section 1368 of the Civil Code is amended to read:*

11 1368. (a) The owner of a separate interest, other than an  
12 owner subject to the requirements of Section 11018.6 of the  
13 Business and Professions Code, shall, as soon as practicable  
14 before transfer of title to the separate interest or execution of a  
15 real property sales contract therefor, as defined in Section 2985,  
16 provide the following to the prospective purchaser:

17 (1) A copy of the governing documents of the common  
18 interest development, including any operating rules, and  
19 including a copy of the association's articles of incorporation, or,  
20 if not incorporated, a statement in writing from an authorized  
21 representative of the association that the association is not  
22 incorporated.

23 (2) If there is a restriction in the governing documents limiting  
24 the occupancy, residency, or use of a separate interest on the  
25 basis of age in a manner different from that provided in Section  
26 51.3, a statement that the restriction is only enforceable to the  
27 extent permitted by Section 51.3 and a statement specifying the  
28 applicable provisions of Section 51.3.

29 (3) A copy of the most recent documents distributed pursuant  
30 to Section 1365.

31 (4) A true statement in writing obtained from an authorized  
32 representative of the association as to the amount of the  
33 association's current regular and special assessments and fees,  
34 any assessments levied upon the owner's interest in the common  
35 interest development that are unpaid on the date of the statement,  
36 and any monetary fines or penalties levied upon the owner's  
37 interest and unpaid on the date of the statement. The statement  
38 obtained from an authorized representative shall also include true  
39 information on late charges, interest, and costs of collection  
40 which, as of the date of the statement, are or may be made a lien

1 upon the owner's interest in a common interest development  
2 pursuant to Section 1367-~~or~~, 1367.1, *or* 1367.2.

3 (5) A copy or a summary of any notice previously sent to the  
4 owner pursuant to subdivision (h) of Section 1363 that sets forth  
5 any alleged violation of the governing documents that remains  
6 unresolved at the time of the request. The notice shall not be  
7 deemed a waiver of the association's right to enforce the  
8 governing documents against the owner or the prospective  
9 purchaser of the separate interest with respect to any violation.  
10 This paragraph shall not be construed to require an association to  
11 inspect an owner's separate interest.

12 (6) A copy of the preliminary list of defects provided to each  
13 member of the association pursuant to Section 1375, unless the  
14 association and the builder subsequently enter into a settlement  
15 agreement or otherwise resolve the matter and the association  
16 complies with Section 1375.1. Disclosure of the preliminary list  
17 of defects pursuant to this paragraph does not waive any  
18 privilege attached to the document. The preliminary list of  
19 defects shall also include a statement that a final determination as  
20 to whether the list of defects is accurate and complete has not  
21 been made.

22 (7) A copy of the latest information provided for in Section  
23 1375.1.

24 (8) Any change in the association's current regular and special  
25 assessments and fees which have been approved by the  
26 association's board of directors, but have not become due and  
27 payable as of the date disclosure is provided pursuant to this  
28 subdivision.

29 (b) Upon written request, an association shall, within 10 days  
30 of the mailing or delivery of the request, provide the owner of a  
31 separate interest with a copy of the requested items specified in  
32 paragraphs (1) to (8), inclusive, of subdivision (a). The items  
33 required to be made available pursuant to this section may be  
34 maintained in electronic form and requesting parties shall have  
35 the option of receiving them by electronic transmission or  
36 machine readable storage media if the association maintains  
37 these items in electronic form. The association may charge a  
38 reasonable fee for this service based upon the association's actual  
39 cost to procure, prepare, and reproduce the requested items.

1 (c) (1) Subject to the provisions of paragraph (2), neither an  
2 association nor a community service organization or similar  
3 entity may impose or collect any assessment, penalty, or fee in  
4 connection with a transfer of title or any other interest except for  
5 the following:

6 (A) An amount not to exceed the association's actual costs to  
7 change its records.

8 (B) An amount authorized by subdivision (b).

9 (2) The amendments made to this subdivision by the act  
10 adding this paragraph do not apply to a community service  
11 organization or similar entity that is described in subparagraph  
12 (A) or (B):

13 (A) The community service organization or similar entity  
14 satisfies both of the following requirements:

15 (i) The community service organization or similar entity was  
16 established prior to February 20, 2003.

17 (ii) The community service organization or similar entity  
18 exists and operates, in whole or in part, to fund or perform  
19 environmental mitigation or to restore or maintain wetlands or  
20 native habitat, as required by the state or local government as an  
21 express written condition of development.

22 (B) The community service organization or similar entity  
23 satisfies all of the following requirements:

24 (i) The community service organization or similar entity is not  
25 an organization or entity described in subparagraph (A).

26 (ii) The community service organization or similar entity was  
27 established and received a transfer fee prior to January 1, 2004.

28 (iii) On and after January 1, 2006, the community service  
29 organization or similar entity offers a purchaser the following  
30 payment options for the fee or charge it collects at time of  
31 transfer:

32 (I) Paying the fee or charge at the time of transfer.

33 (II) Paying the fee or charge pursuant to an installment  
34 payment plan for a period of not less than seven years. If the  
35 purchaser elects to pay the fee or charge in installment payments,  
36 the community service organization or similar entity may also  
37 collect additional amounts that do not exceed the actual costs for  
38 billing and financing on the amount owed. If the purchaser sells  
39 the separate interest before the end of the installment payment

1 plan period, he or she shall pay the remaining balance prior to  
2 transfer.

3 (3) For the purposes of this subdivision, a “community service  
4 organization or similar entity” means a nonprofit entity, other  
5 than an association, that is organized to provide services to  
6 residents of the common interest development or to the public in  
7 addition to the residents, to the extent community common areas  
8 or facilities are available to the public. A “community service  
9 organization or similar entity” does not include an entity that has  
10 been organized solely to raise moneys and contribute to other  
11 nonprofit organizations that are qualified as tax exempt under  
12 Section 501(c)(3) of the Internal Revenue Code and that provide  
13 housing or housing assistance.

14 (d) Any person or entity who willfully violates this section is  
15 liable to the purchaser of a separate interest that is subject to this  
16 section for actual damages occasioned thereby and, in addition,  
17 shall pay a civil penalty in an amount not to exceed five hundred  
18 dollars (\$500). In an action to enforce this liability, the prevailing  
19 party shall be awarded reasonable attorneys’ fees.

20 (e) Nothing in this section affects the validity of title to real  
21 property transferred in violation of this section.

22 (f) In addition to the requirements of this section, an owner  
23 transferring title to a separate interest shall comply with  
24 applicable requirements of Sections 1133 and 1134.

25 (g) For the purposes of this section, a person who acts as a  
26 community association manager is an agent, as defined in  
27 Section 2297, of the association.